IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10613 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

JETHABHAI KHIMABHAI KADCHA

Appearance:

1. Special Civil Application No. 10613 of 2004

MR HARDIK C RAWAL for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 05/11/2004

ORAL JUDGEMENT

Gujarat State Road Transport Corporation

(hereinafter referred to as "the corporation") has challenged the judgement and award dated 30.12.2003 passed by the learned Judge of the Labour Court, Palanpur in Reference (LCP) No.95 of 2001.

2. The learned Judge was pleased to partly allow the reference and quash the order of dismissal dated 03.07.1993 and order that the respondent-workman, Jethabhai Khimabhai Kadcha be reinstated on his original post with continuity of service without any prejudice to his seniority with 25% back wages. The case of the petitioner-corporation is that the respondent workman was serving as Driver with the petitioner corporation. On 15.05.1992 when the respondent workman was on duty on Madhavpur-Rajkot route express bus, it was checked by the Inspecting (Checking) Squad. The personnel of the Checking Squad noticed the following irregularities:

(i) Three passengers were found travelling from Madhavpur to Junagadh without tickets, at the behest of the respondent workman-driver.

(ii) At the time of checking of the bus by the Checking Squad, the respondent workman-driver misbehaved and insulted the officer of the Checking Squad and refused to give statement.

(iii) The respondent workman-driver did not permit the officer of the Checking Squad to collect fare and fine from the passengers.

The misconduct was reported to the higher authorities. For the alleged misconduct a charge sheet was issued on 16.05.1992. Departmental inquiry was held, wherein the charges levelled against he respondent workman were found proved. The petitioner corporation dismissed the respondent workman by order dated 03.07.1993.

The respondent workman-driver did not challenge the order of dismissal for a period of five years. It was only on 27.05.1998 he preferred a departmental First Appeal, which was dismissed on 10.06.1998. The respondent workman then raised an industrial dispute only after lapse of about three and half years, i.e. in the year 2001. In the reference proceedings, the respondent workman filed a Purshis and waived the challenge to the 'legality and validity' of the departmental inquiry, but did challenge the findings recorded in the inquiry.

3. The learned Judge of the Labour Court on bi-parte hearing came to the conclusion that as the amount of fare

and fine is recovered from the salary of the respondent workman-driver and he is transferred from Mangrol to Palanpur, imposition of penalty of dismissal is triple punishment for one single misconduct. The learned Judge also recorded a finding to the effect that the penalty of dismissal is harsh and disproportionate, even if the misconduct committed by the respondent workman is held to be proved. The learned Judge did not give any weightage to the fact that the respondent workman was punished for five times in the past for various misconducts.

After having reached the aforesaid conclusions, the learned Judge passed the aforesaid judgement and award, which is under challenge in this petition.

4. Mr.Raval, learned advocate appearing for the petitioner corporation submitted that once the respondent workman has given a go bye to the challenge, to the 'legality and validity' of the departmental inquiry, it was not open for the learned Judge to pass the impugned award. The learned advocate for the petitioner submitted that the misconduct was proved and the misconduct was grave enough to warrant dismissal. The workman was working as driver, he acted high-handed manner and at his behest passengers were travelling without tickets. Not only that, when the bus was checked the respondent workman misbehaved with the officers of the checking squad. He did not allow the checking squad to collect the amount of fare and fine and also did not allow the officers of the Checking Squad to record his statement. He submitted that in that view of matter the learned Judge ought not have taken lenient view in the matter and should have held that the 'dismissal' was the only penalty which could have been imposed once such misconduct is proved.

5. The learned advocate for the petitioner submitted that the learned Judge has committed grave error in holding that prejudice is caused to the respondent workman, as the amount of fine and fare is recovered from his salary and that at the relevant time he was transferred from Mangrol to Palanpur. The learned advocate submitted that recovery of amount of fine and fare, which the respondent workman did not allow to be effected from the passengers was bound to be recovered from the respondent workman-driver and his transfer was to see that he is away from the place where he had been found indulging in such a misconduct. He submitted that by no stretch of imagination transfer can be said to be a punishment. It was only after the authorities found the respondent workman guilty of misconduct that he was

punished with dismissal and therefore, the conclusion reached by the learned Judge of the Labour Court that the respondent workman is punished thrice is erroneous and requires to be quashed and set aside by this Honourable Court.

6. The learned advocate submitted that the learned Judge has erred in not taking cognisance of the fact that the respondent workman was punished on five occasions in the past for different misconducts.

7. Mr.G.K. Rathod, the learned advocate for the respondent workman submitted that the judgement and award of the learned Judge of the Labour Court, Palanpur is in accordance with law and does not warrant interference at the hands of this Court. He submitted that the learned Judge after taking into consideration the long service of the respondent workman has rightly awarded reinstatement with continuity of service without prejudice to the seniority of the respondent workman. The learned advocate submitted that the fact that only 25% back wages are awarded shows the full application of mind. He submitted that the learned Judge has taken care to strike balance between the interest of both the parties inasmuch as he has awarded only 25% of the back wages and therefore, no interference is warranted at the hands of this Court.

8. The fact that the misconduct is proved against the respondent workman in the departmental inquiry, the legality and validity of the said inquiry is not challenged by the respondent workman. The misconduct which is proved, cannot be said to be of the nature which will warrant a lenient view in the matter. In fact the case warranted a stricter view, inasmuch as, so far it was only conductors who were reported to indulge in misappropriating the amount by collecting fare from the passengers and not issuing tickets. In this case the respondent who is serving as a driver, made three passengers to travel without tickets. What is more serious is that at the time of checking the respondent workman behaved in a very irresponsible manner. He not only insulted the officers of the Checking Squad but also did not allow them to record his statement, did not allow the Checking Squad to collect the fare and fine, this aggravates the gravity of misconduct. In view of the judgements of the Honourable the Apex Court in the matter of Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, reported in JT 2004 (8) SC 103, and in the matter of M/s Sangham Tape Company Vs. Hans Raj, reported in JT 2004 (8) SC 109, the judgement and award of the Labour Court

deserves to be quashed and set aside by this Court.

9. Accordingly, this petition is allowed. The judgement and award of the Labour Court is hereby quashed and set aside. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)
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